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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/297,237 05/17/99 EICHINGER

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EXAMINER

PM82/0605

EDWIN D SCHINDLER
FIVE HIRSCH AVENUE
PO BOX 966
CORAM NY 11727-0966

CHAVEZ, P	
ART UNIT	PAPER NUMBER

3635
DATE MAILED:

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06/05/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/297,237

Applicant(s)
Elchinger

Examiner
Patrick J. Chavez

Art Unit
3635



- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 21, 2001
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-31 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirements.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other: _____

Art Unit: 3635

DETAILED ACTION

Information Disclosure Statement

The references cited in the Search Report PCT/DE97/02793 have been considered, but will not be listed on any patent resulting from this application because they were not provided on a separate list in compliance with 37 CFR 1.98(a)(1). In order to have the references printed on such resulting patent, a separate listing, preferably on a PTO-1449 form, must be filed within ONE MONTH of the mailing date of this communication. NO EXTENSION OF TIME WILL BE GRANTED UNDER EITHER 37 CFR 1.136(a) OR (b) to comply with this requirement.

Claim Rejections - 35 USC § 102

1. Claims 20, 25-26 and 28-31 rejected under 35 U.S.C. 102(b) as being anticipated by O'Brian et al. (US Patent 4,365,799).

In Figure 5, O'Brian teaches of a play structure comprising: vertical plate like supporting posts, 20 and 22, having vertical stops or locking elements, 34, 30 and 98, with recesses provided at these plug connections; a side rail, 136, on the top side of the slab; and a roof affixed to said supporting posts, 26, said roof being a self-supporting slab resting in a horizontal direction. Also disclosed is a fastening device, 108, on the base or edge of the slab. Figure 6 reveals a guide rail as part of the fastening hinge, 108, placed on the underside of the slab, 106.

Art Unit: 3635

In regards to claim 26, the cited reference embodies supporting posts, 98, which have a length exceeding a distance as measured from said roof, 96, to a floor level, and having a recess, 104, into which said self-supporting slab is capable of being inserted.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 22-23 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brian et al.

O'Brian discloses a play structure as discussed above, but does not teach of the self-supporting slab to be shaped as a hexagon or a half-hexagon. In light of the specification, no level of criticality is established for the hexagonal shape. The Examiner contends that the structure would preform identically with a slab shape other than instantly claimed. As such, the desired slab shape would be a design option to one having ordinary skill in the art.

In regards to claim 27, O'Brian discloses the claim invention except for the vertical plate-like bodies material composition. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select straw with a binding agent as the material for the vertical plate-like bodies, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of

Art Unit: 3635

obvious design choice. Straw with a binding agent has routinely been selected as an adequate building material for structural members.

4. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brian in view of Ahrens (US Patent 4,447,055).

O'Brian discloses a play structure as discussed above, but does not teach of a self-supporting slab comprising a cover plate which rests upon a level framework. In Figures 1 and 2, Ahrens teaches of a play structure with a cover plate, 12, which rests upon a frame, 32. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the use of a framework, such as that of Ahrens, with O'Brian's invention so as to provide a more rigid and secure slab structure. Figure 6 of O'Brian's disclosure reveals some usage of such a cover plate/frame assembly, thus making it obvious to combine the teachings of Ahrens.

5. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brian in view of Vinson.

O'Brian discloses a play structure as discussed above, but does not teach of said supporting posts having a horizontal cross-section which is bent or curved. While the Examiner considers the particular cross-section selected to be a design choice, the Vinson reference is cited to reinforce the Examiner's position. In Figure 1, Vinson reveals supporting posts, 38, which are bent or curved in cross-section. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the play structure of O'Brian with the bent/curved supporting posts of Vinson so as to provide an adequate and alternative design choice.

Art Unit: 3635

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Smith (US Patent 5,865,660), Ahrens et al. (US Patent 4,484,738), Briant (US Patent 5,580,294) and Gonzalez (US Patent 5,121,710).

7. Applicant's arguments with respect to cancelled claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick J. Chavez whose telephone number is (703) 306-5706.

Application/Control Number: 09/297237

Page 6

Art Unit: 3635



Carl D. Friedman
Supervisory Patent Examiner
Group 3600



PJC

May 24, 2001